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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

KATHY KEETON,

Petitioner,

vs.

HUSTLER MAGAZINE, INC., LARRY C. FLYNT, LFP, INC. and L.F.P., INC.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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Questions Presented

1. Where the requirements of a state's longarm statute have been met, and the court would have personal jurisdiction of a suit by a resident plaintiff against the defendants, does the due process clause of the United States Constitution nevertheless prohibit that state from exercising personal jurisdiction over the defendants merely because the plaintiff is not a resident of the forum?

2. Where a plaintiff suffers damages in the forum by activity taking place there, is the right of the forum state to exercise jurisdiction over the wrongdoer for such activity prohibited by the due process clause of the United States Constitution merely because the plaintiff is not a resident of the forum?

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2 Restatement 2d, Conflict of Laws (1971) Sec. 36, Comment C 6

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KATHY KEETON,

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HUSTLER MAGAZINE, INC., LARRY C. FLYNT, LFP, INC. and L.F.P., INC.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Petitioner Kathy Keeton prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the First Circuit entered in the above-entitled action on June 16, 1982.

Opinion Below

The opinions of the Court of Appeals, 682 F.2d 33, and the District Court, not officially reported, appear in the Appendix hereto.

Jurisdiction

The judgment of the Court of Appeals for the First Circuit was entered on June 16, 1982, and this petition was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

Statutory Provisions Involved

The First Amendment and Section 1 of the Fourteenth Amendment to the Constitution of the United States, New Hampshire's Criminal Defamation Statute, R.S.A. 644:11, and the relevant portion of New York's long arm statute, CPLR §302(a)(2)(3), are set out in their entirety in the Appendix hereto. New Hampshire's long-arm statute, R.S.A. 300:11-15 and R.S.A. 510:4 are appended in full to the opinion of the Court of Appeals.

Statement of the Case

In April 1977, Kathy Keeton, a resident of New York, brought an action in the Franklin County Court of Common Pleas of Ohio for libel and invasion of privacy against Hustler Magazine, Inc. She was joined as plaintiff in that action by Robert C. Guccione, the publisher of Penthouse Magazine. The complaint alleged tha Flynt and Hustler had waged an unrelenting campaign of malicious libel against the plaintiffs which culminated in a cartoon published in the May 1976 issue of Hustler Magazine that, *inter alia,* accused Guccione of infecting Keeton with a venereal disease.

In May 1978, Keeton's cause of action for libel was dismissed as barred by the Ohio statute of limitations. Keeton

did not appeal because she believed that substantially the same damages could be recovered in her suit for invasion of privacy. However, literally on the eve of trial, on February 19, 1980, the Ohio trial court dismissed Keeton's invasion of privacy claim on the theory that the New York statute of limitations was migratory and barred her claim. That order was entered on February 28, 1980, and Keeton filed a Notice of Appeal on March 20, 1980. On September 30, 1980, the Franklin County Court of Appeals affirmed the dismissal of Keeton's privacy claim, based upon the application of the New York statute of limitations.

Keeton promptly commenced this action in the United States District Court for the District of New Hampshire on October 21, 1980.* The jurisdiction of the New Hampshire district court was invoked under 28 U.S.C. §1332: the plaintiff is a resident of New York, the individual defendant a resident of California and the remaining defendants are Ohio corporations.

In an opinion issued on June 18, 1981 (2a-8a) the district court granted defendants' motion to dismiss on the ground of lack of personal jurisdiction. The district court found that while defendants' activity in New Hampshire may have been suffifficient to satisfy that state's long-arm statute—particularly since such contacts with New Hampshire "were not random, isolated or transitory" but were "purposefully directed at New Hampshire" (5a)—plaintiff's minimal contacts with the forum and the absence of a state interest in protecting nonresidents from defama-

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* This action asserts libel resulting from the scurrilous cartoon published in the May 1976 issue of Hustler Magazine, as well as publication of nude photographs of a 50-year-old female in the September 1975 issue of Hustler, falsely identified as Kathy Keeton, and several subsequent issues of the magazine reprinting or referring to those same photographs.

tion would render it unfair as a matter of due process to permit New Hampshire to assert jurisdiction over the defendants.

The Court of Appeals affirmed on June 16, 1982 (11a-20a), similarly holding that the due process clause of the federal constitution prohibited the exercise of personal jurisdiction, even though the New Hampshire long-arm statute was satisfied and even though a resident of New Hampshire could have maintained such a suit. Thus, the courts below have forced New Hampshire to discriminate against nonresidents in favor of residents; and to deny nonresidents access to its courts while granting residents access under identical circumstances. We do not believe that the due process clause can be constitutionally applied in such a manner. Cf. *Perkins* v. *Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952).

REASONS FOR GRANTING THE WRIT

1. In focusing on plaintiff's contacts with the forum, the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings as to call for the exercise of this Court's power of supervision.

It is a distortion of the "fairness" test for the court below to close the doors of the New Hampshirt courts once defendants' minimum contacts with that jurisdiction have been established. Such a holding impacts upon every case brought by a nonresident, and suggests a new, impermissable emphasis upon plaintiff's contacts with the forum—an approach inconsistent with the teaching of this Court.

The seminal case of *International Shoe Co.* v. *State of Washington,* 326 U.S. 310, 316 (1945), focused the due process analysis upon the *defendant's* contacts with the forum:

> ". . . due process requires *only* that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" (Emphasis added) (Citations omitted).

In *World-Wide Volkswagen Corp.* v. *Woodson,* 444 U.S. 286, 292 (1980), this Court emphasized "[t]he relationship between the defendant and the forum" as the test of reasonableness and identified other relevant factors, none of which included plaintiff's contacts with the forum. This Court has never included plaintiff's relationship with the forum as an element of the due process analysis. Such an omission was not accidental, as recently confirmed by the decision in *Rush* v. *Savchuk,* 444 U.S. 320 (1980).

In *Rush,* this Court declared unconstitutional the line of cases typified by *Seider* v. *Roth,* 16 N.Y.2d 111 (1966), which permitted a resident to obtain *quasi in rem* jurisdiction over a nonresident by attaching the insurance company's obligation to defend arising from the defendant's insurance policy. Criticizing the *Seider* variety of cases, this Court observed that "they shift the focus of inquiry from the relationship among the defendant, the forum and the litigation to that among the plaintiff, the forum, the insurer, and the litigation." *Id.* at 332. This Court concluded that this shift was neither intended nor permitted by the holding in *International Shoe*:

> "This subtle shift in focus from the defendant to the plaintiff is most evident in the decisions lim-

> iting Seider jurisdiction to actions by forum residents on the ground that permitting nonresidents to avail themselves of the procedure would be unconstitutional. *In other words, the plaintiff's contacts with the forum are decisive in determining whether the defendant's due process rights are violated.*
>
> *Such an approach is forbidden by International Shoe and its progeny." Id.* (Emphasis added).

Abandoning all semblance of subtety, the court below simply seized upon plaintiff's lack of contacts with New Hampshire as the decisive factor in dismissing the lawsuit.

In addition, the Court of Appeals sought to justify its conclusion by observing that "New Hampshire has no special interest in protecting a nonresident against this out-of-state activity" (18a). But there can be no doubt that a tort was committed in New Hampshire by the distribution there of the defamatory publications. The Supreme Court of New Hampshire expressly recognized the important state interest in such circumstances:

> "A state has an especial interest in exercising judicial jurisdiction over those who commit torts within its territory. This is because torts involve wrongful conduct which a state seeks to deter, and against which it attempts to afford protection, by providing that a tortfeasor shall be liable for damages which are the proximate result of his tort." *Leeper* v. *Leeper*, 114 N.H. 294, 298 (1974), quoting from Restatement 2d, Conflict of Laws §36, Comment e (1971).

The "especial interest" identified by the New Hampshire Supreme Court in *Leeper* is no less present in a

defamation case. As the court in *Leeper* stressed, it is "wrongful conduct" which the State of New Hampshire seeks to deter—the state's "especial interest" in deterrence is not affected by the damags caused by such wrongful conduct. The pivotal factor is *conduct*—whether the plaintiff has been damaged extensively or minimally in New Hampshirt should not erode New Hampshire's resolve to deter tortious conduct wherever it may be found within state borders.

Were defendants citizens of New Hampshire, they could certainly be sued there. If defendants' home state is thus viewed as having an interest in policing the conduct of its residents, then surely there is an even greater interest in monitoring the affairs of those nonresidents who intrude themselves into the commerce of the forum and exploit its citizens for profit and commercial gain.

Furthermore, New Hampshire has an abiding interest in deterring criminal conduct. Defendants' activities in New Hampshire violate that state's criminal defamation statute, which makes it a misdemeanor if a person "purposely communicates to any person, orally or in writing, any information which he knows to be false and knows will tend to expose any other living person to public hatred, contempt or ridicule." R.S.A. 644:11(A).

The court below indicated that the only obstacle blocking jurisdiction was its decision in *Seymour* v. *Parke, Davis & Co.*, 294 F. Supp. 1257 (D.N.H. 1969), *aff'd*, 423 F.2d 594 (1st Cir. 1970). This case presents facts far different from those which the court held insufficient to support jurisdiction in *Seymour;* moreover, this case falls within each of the two independent exceptions identified in *Seymour* as circumstances in which jurisdiction could be constitutionally exercised.

Seymour was an action for personal injury and wrongful death caused by a drug manufactured by the defendant pharmaceutical company. The contaminated drug was prescribed by a Massachusetts physician, purchased in a Massachusetts drug store and ingested by plaintiff's decedent in Massachusetts, where he lived at all times until his death.

In *Seymour,* the tort occurred in Massachusetts, whereas here the tort occurred in New Hampshire because the libel was published there. In *Seymour,* the only complaint about defendant's drug was with respect to the single dosage taken by plaintiff's decedent in Massachusetts. Here, the actual product complained of was in fact circulated in New Hampshire—some 50-75,000 copies of Hustler Magazine "contaminated" with the offensive libel were distributed throughout the state.

The district court in *Seymour* acknowledged the the case was one of "first impression", 294 F. Supp. at 1260, so that the ruling would be "limited to the facts of the instant case," *id.* at 1263. Central to the district court's decision was its conclusion that New Hampshire "has *absolutely no interest whatsoever* in the litigation". *Id.* (Emphasis added). However, in view of the subsequent decision of the New Hampshire Supreme Court in *Leeper* and the New Hampshire criminal defamation statute, New Hampshire has clearly identified its "especial interest" in deterring tortious and criminal conduct within its borders.

The *Seymour* case actually supports the exercise of jurisdiction here because of the due process guidelines enumerated by the Court of Appeals:

> "If the plaintiff has some attachment to the forum, or if the defendant has adopted the state as one of its major places of business, we would

> have no question of the right of the state to subject the defendant to suit for *unconnected causes of action. Nor would we even if the forum were not a major center of defendants' business but were nevertheless a community into whose business life fendant had significantly entered as determined by the quality, substantiality, continuing and systematic nature of its activities."* 423 F.2d at 587 (Emphasis added).

First, in this case the cause of action is *connected* to the forum because the libel occurred in New Hampshire. That alone under *Seymour* should satisfy the due process requirement of fairness. In *Perkins* v. *Benguet Consolidated Mining Co.*, 342 U.S. 437, 447 (1952), where *all* parties were nonresidents, this Court found that defendant's business activities were sufficient to permit an Ohio court to assert jurisdiction, even "where the cause of action arose from activities entirely distinct from its activities in Ohio."

Second, New Hampshire is certainly "a community into whose business life the defendant had significantly entered as determined by the quality, substantiality, continuity and systematic nature of its activities." To meet this test, it is not required that New Hampshire be "a major center of defendant's business," but only a community into which the defendant has entered on a regular and substantial basis, as already found by the district court below (5a). Defendants' interrogatory answers reveal that during the five months between November 1977 and March 1978, defendants distributed 94,050 copies of Hustler Magazine in New Hampshire, earning gross revenues of $235,125 ($2.50 per copy). Using that period as a typical five-month circulation figure, defendants since 1975 have distributed over 1,692,900 Hustler Magabines in New Hampshire, earning

over $4,232,250 in gross revenues to date (on the basis of $2.50 per issue, although the cover price has since increased). This persistent exploitation of the New Hampshire marketplace surely qualifies as the kind of "significant" involvement contemplated by *Seymour*.

In a case jurisdictionally indistinguishable from this action, the New Hampshire district court exercised jurisdiction. *Galonis* v. *National Broadcasting Co.*, 498 F. Supp. 789 (D.N.H. 1980), was a defamation action brought in New Hampshire by a *Pennsylvania* citizen and *Pennsylvania* corporations against *Delaware* corporations with principal offices in *New York*. The court rejected defendants' argument that "venue in New Hampshire is improper because the damages (if any) incurred by the plaintiffs were national and not confined to New Hampshire . . ." *Id.* at 791. Thus, although the defendants in *Galonis* raised the issue of reputation damages caused by a nationwide defamation, the court entertained the lawsuit even though the primary situs of injury was arguably in Pennsylvania (plaintiff's state of residence) and the damages suffered in New Hampshire were no greater than that incurred in other jurisdictions. Significantly, the federal court exercised jurisdiction in *Galonis*, although New Hampshire has no more of an interest in that defamation case brought by a nonresident than it has in this litigation.*

The risk of being sued in a foreign jurisdiction is not unexpected for a publisher who expolits a nationwide market. See *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 297 (1980); *McGee* v. *International Life Insurance Co.*, 355 U.S. 220, 223 (1957). The Fifth Circuit in *Curtis Publishing Co.* v. *Golino*, 383 F.2d 586, 590 (5th Cir.

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* This Court too has upheld jurisdiction in a case brought by a nonresident against a nonresident. *Perkins* v. *Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952).

1967), drew a sharp distinction between publications seeking a national audience and those geared primarily for local consumption. The Fifth Circuit warned that a careful publisher could eliminate all contacts, other than circulation, with most jurisdictions and thereby enjoy an immuinty from suit in those forums "in spite of the pecuniary benefits gained in that very jurisdiction where it asserts it cannot be held legally accountable." *Id.* at 591.

> "Clearly it would not comport with notions of fair play and substantial justice to allow a business enterprise, whose overriding business purpose is maximum exploitation of the national market to be free from suit as a matter of law in all states but that of publication simply because physical contacts with the other states had been reduced to a minimum." *Id.*

If the risk of litigation is too great, the publisher can sever its connection with the jurisdiction or simply alleviate the risk by procuring insurance or otherwise passing along the expected costs to its customers. *World-Wide Volkswagen Corp.* v. *Woodson,* 444 U.S. 286, 297 (1980).

Even the New Hampshire district court has cautioned against erecting an "unreasonable barrier to lawsuits against foreign corporations, based not on the practicalities of the situation, but on legal formulas and fictions that bear no relationship to the facts of life in the 1970's." *Gill* v. *Fairchild Hiller Corp.,* 312 F. Supp. 916, 918 (D.N.H. 1970). The New Hampshire district court recognized the price a publication must pay for the benefits of national circulation:

> "The risk of suit being brought against them in any one of the fifty states is one of the risks that defendants must bear because of the nature of their business." *Id.*

Nor does this subject defendants like Hustler to unpredictable and inconsistent results, for choice of law principles will uniformly select the appropriate substantive law to be applied, regardless of the situs of the litigation.

Accordingly, refusing to permit New Hampshire courts to exercise jurisdiction over the defendants in this case constitutes the very "subtle shift in focus" which is "forbidden by *International Shoe* and its progeny", *Rush* v. *Savchuk, supra* at 332, and ignores the special risks and responsibilities imposed on the media as the price of doing business in an era where state lines have been obliterated by modern technology.

2. The Court of Appeals decision involves a jurisdictional question of great public importance which should be settled by this Court.

The opinions by the courts below have far-reaching consequences for every litigant who seeks to bring an action in a jurisdiction other than his home state. The opinions below have particular adverse consequences for libel plaintiffs in terms of limiting the available juirsdictions in which they can sue, with the possible hardship of compeling travel to the jurisdiction of the wrongdoer as the only available forum.

In part due to the proliferation of libel actions and the obliteration of state boundaries by modern technology, this Court in recent years has devoted considerable attention to the standards and constitutional defenses available in libel actions and the limits imposed by due process upon states seeking to expand the jurisdictional reach of their long-arm statutes. However, this Court has yet to address the novel issues raised herein, which combine the unique aspects of a defamation claim with the nebulous concept

of "fair play and substantial justice" as applied to a nonresident plaintiff in contrast to a resident plaintiff. In short, does due process mandate a different jurisdictional standard where the plaintiff is a nonresident rather than a resident? Or put another way, does the due process clause require a state to deny nonresidents access to its courts although under the same circumstances the state may grant access to residents?

The decision of the Court of Appeals affirming the dismissal of this action is based solely on due process grounds —"that the federal constitution . . . would not permit New Hampshire to exercise jurisdiction over defendants in this instance" (13a).* The Court of Appeals believed it would be constitutionally "unfair" to permit this lawsuit because of the special problems involved in a libel case (18a). While "the plaintiff must recover the damages caused in *all* states in one single suit" (17a), here, the court reasoned, "[n]early all the damages the plaintiff seeks arise from injury to her reputation outside of New Hampshire" (18a).**

The court thus recognized that plaintiff "is suing in part for damages suffered in New Hampshire" (15a)***,

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* There is no question that the New Hampshire long-arm statutes seek to extend jurisdiction over nonresidents to the fullest extent permitted under the federal constitution (13a).

** The court ignored the fact that damages in a libel action are not limited to injury to reputation, but may also include "personal humiliation, and mental anguish and suffering." *Gertz* v. *Welch*, 418 U.S. 323, 350 (1974).

*** This Court has suggested that a nonresident like Keeton can sue for injury suffered in the forum where a defendant has launched "its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum state." *World-Wide Volkswagen* v. *Woodson*, 444 U.S. 286, 297-98 (1980).

but that it would be unfair to hold defendants responsible in a New Hampshire action for damages suffered outside of that state—"the New Hampshire tail is too small to wage so large an out-of-state dog" (19a). Keeton may not split her cause of action among several jurisdictions, and the policy behind the single publication rule requires a single lawsuit for multistate defamation; accordingly, the Court of Appeals affirmed the dismissal of the action in its entirety rather than permitting the case to proceed at least on the basis of damages suffered in New Hampshire.

The bizarre nature of this ruling becomes most apparent in the court's analysis of "fairness" under *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945), and its progeny. It is undisputed that an average of 10-15,000 copies of Hustler Magazine are distributed each month within New Hampshire. This commercial actively has been taking place on a regular basis since the inception of the publication in 1975.* As the district court found, these contacts "were not random, isolated or transitory" but "purposefully directed at New Hampshire . . ." (5a).** The defendants have therefore engaged in those acts by which they "purposefully avail [themselves] of the privilege of conducting activities with the forum state,

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* Keeton complains about five separate issues of Hustler Magazine: September 1975, October 1975, The Best of Hustler No. 2 (published in late 1975), May 1976 and July 1976, so that between 50-75,000 copies distributed in New Hampshire are the subject of this lawsuit.

** This case is therefore distinguishable from the "fortuitous circumstance" and "isolated occurrence" of a single automobile sold in one state that happens to suffer an accident while passing through the forum state. *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 295, 297 (1980).

thus invoking the benefits and protections of its laws." *Hanson* v. *Denckla*, 357 U.S. 235, 253 (1958).

Defendants' conduct in New Hampshire is no less purposeful because plaintiff was simultaneously harmed in other jurisdictions as well, nor does the extent of the harm caused Keeton in New Hampshire render the defendants' conduct any less tortious or any less purposeful. Certainly due process cannot prevent New Hampshire from redressing such conduct at the behest of a nonresident and at the same time permit New Hampshire to redress such conduct at the behest of a resident.

Once these minimum contacts are factually established, the jurisdictional inquiry should have come to an end, and due process does not permit further inquiry into plaintiff's relationship with the forum. That is the teaching set forth by this Court and other Courts of Appeal. *Perkins* v. *Benguet Consolidated Mining Co.*, 342 U.S. 437, 443 (1952); *Rush* v. *Savchuk*, 444 U.S. 320, 332 (1980). Yet the court below seized upon the dubious proposition that the reputation damages suffered by a nonresident (but presumably not a resident) can be apportioned from state to state, and concluded that it would be "unfair" to permit suit in a forum of minimal damage.

The effect of this unusual holding is to either force a libel plaintiff to seek out the wrongdoer in his own jurisdiction or to confine the plaintiff to the forum of primary injury which, according to the courts below, is plaintiff's home state.* But this result totally ignores the purposeful acts of the defendants in causing plaintiff injury in New Hampshire. A consistent application of

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* Because Keeton is a New York resident, and New York's long-arm statute excepts a cause of action for defamation, Keeton would have no such choice. CPLR §302(a)(2)(3) (22a).

the rule created by the courts below would even render it "unfair" for plaintiff to sue in her home state and seek to recover damages for the harm suffered in other jurisdictions.

In support of its conclusion that it would be "unfair" to allow this action, the Court of Appeals cited the policies of penalizing "a plaintiff who sleeps on her rights" and the need to avoid subjecting a publisher to "the risk of suit covering all damage suffered everywhere as long as there is any state anywhere with a statute of limitations that has not expired." (18a). These considerations have no application to Keeton, who vigorously pursued her rights both in Ohio and New Hampshire. Moreover, the policy which seeks to protect a publisher against the interminable risk of lawsuits simply does not apply where the publisher has been put on notice of plaintiff's grievance and is aware that plaintiff is actively pursuing her rights.

CONCLUSION

This case presents an egregious example of a federal court's impermissible application of the due process clause to infringe upon a state's exercise of jurisdiction. Although the State of New Hampshire has enacted a long-arm statute which embraces jurisdiction over the defendants in this action, and even the federal courts would have permitted New Hampshire to exercise jurisdiction if the plaintiff was a resident, the court below incongruously held that allowing jurisdiction here would somehow be "unfair" to the defendants merely because of the fortuitous circumstance of plaintiff's nonresidence.

The application of the principles outlined by this Court in *International Shoe* and its progency yields predictable

jurisdictional results once the "minimum contacts" test has been met. However, according to the court below, where the plaintiff is a nonresident, satisfying the "minimum contacts" test does not end the jurisdictional inquiry, but begins a new inquiry that involves an impractical weighing of whether defendants' contacts are sufficient to overcome the factor of plaintiff's nonresidence. This novel and unworkable doctrine, invoked only where plaintiff is a nonresident of the forum, destroys the threshold level of "minimum contacts" which at least guaranteed consistent results under *International Shoe*, and substitutes in its place an undefined and unpredictable balancing test.

The confusing consequences of this decision require that a writ of certiorari issue to review the judgment and opinion of the First Circuit.

Respectfully submitted,

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[Appendices Follow]

APÉNDICES

Order and Opinion of the United States District Court for the District of New Hampshire, Filed June 18, 1981

UNITED STATES DISTRICT COURT

DISTRICT OF NEW HAMPSHIRE

Civil Action No. 80-498-D

KATHY KEETON,

v.

HUSTLER MAGAZINE, INC., *et al.*,

JUDGMENT

In accordance with the Order dated June 18, 1981 by the Honorable Andrew A. Caffrey, United States District Judge, Sitting By Designation, judgment is hereby entered.

By the Court,

JANICE G. BURHOLD
Deputy Clerk

June 19, 1981

cc: W. Michael Dunn,Esq.
Dort S. Bigg, Esq.
Norman Roy Grutman, Esq.
Jeffrey H. Daichman, Esq.
C. William Brownfield, Esq.

Order and Opinion of the United States District Court for the District of New Hampshire, Filed June 18, 1981

UNITED STATES DISTRICT COURT

DISTRICT OF NEW HAMPSHIRE

Civil Action No. C-80-498-D

KATHY KEETON,

Plaintiff,

v.

HUSTLER MAGAZINE, INC., *et al.*,

Defendants.

OPINION

June 18, 1981

CAFFREY, J.*

This civil action for libel seeks damages on the basis of photographs and text which appeared in the September, 1975 issue of *Hustler* magazine, and a cartoon which appeared in the May, 1976 issue. Plaintiff Kathy Keeton, a resident of New York, filed her complaint on October 21, 1980 against defendants Hustler Magazine, Inc., an

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* Of the District of Massachusetts sitting by designation.

Order and Opinion of the United States District Court for the District of New Hampshire, Filed June 18, 1981

Ohio corporation, Larry C. Flynt, the publisher, editor and owner of *Hustler* and a resident of California, and LFP or L.F.P., Inc., an Ohio corporation which is the holding company for the magazine. An amended complaint was filed on November 3, 1980. Diversity of citizenship and the requisite jurisdictional amount are alleged. In May, 1977 Kathy Keeton, as a co-plaintiff, sued the same defendants in an Ohio state court for libel and invasion of privacy on the basis of the same publications. Her libel claims were dismissed in November, 1977 on the grounds that they were barred by the Ohio statute of limitations.

According to uncontradicted affidavits submitted by defendants, none of them owns any real estate or personal property in New Hampshire. The defendants further state that they have no offices or space, vehicles, bank accounts, telephones, telephone listings or listed address in the state. They hold no corporate or personal meetings and conduct no business in the state, other than the sale of a limited number of *Hustler* magazines, which are distributed through independent contractors. The defendants hold no ownership interest in the wholesalers or retailers who distribute the magazine. Receipts from the sale of the September, 1975, and May, 1976 issues containing the alleged defamatory subject matter constituted less than 1% of the total United States sales of *Hustler* for those time periods. Defendants do not advertise or solicit business in the state, except for the promotion contained in the magazines themselves.

The file of the instant case contains documents reciting that the plaintiff, Kathy Keeton, is associate publisher and senior vice-president of *Penthouse* magazine.

Order and Opinion of the United States District Court for the District of New Hampshire, Filed June 18, 1981

Penthouse is a rival of *Hustler* in the "adult entertainment" magazine business. Ms. Keeton and the publisher of *Penthouse*, Bob Guccione, are common-law husband and wife; and, together, they were co-plaintiffs in the 1977 libel suit against *Hustler* in Ohio state court. Ms. Keeton owns no real estate or personal property in New Hampshire, has never resided in the state, and presently lists a New York address as her place of residence. Her name appears three times in small print on the credits page of *Penthouse*. This listing of the various corporate officers and administrative executives is published in each monthly issue of the magazine. Apparently, this monthly listing is the plaintiff's sole contact with the forum state. The plaintiff alleges that she has acquired, through the publication of her name as a corporate officer and publisher of *Penthouse*, a reputation in the state of New Hampshire and has had that reputation damaged by the *Hustler* publications.

Plaintiff has the burden of pleading and proving facts which establish the Court's personal jurisdiction over the defendant. *Aro Manufacturing* v. *Automobile Research Corp.*, 352 F.2d 400 (1st Cir. 1965), *cert. denied*, 383 U.S. 947 (1966). Personal jurisdiction is alleged under the New Hampshire long arm statute, which authorizes service of process on any foreign corporation transacting business in the state. N.H. R.S.A. 300:41(c). The New Hampshire Supreme Court has held that the purpose of the statute is to extend jurisdiction over a non-resident to the fullest extent permitted under the Constitution. *Roy* v. *North American Newspaper Alliance*, 106 N.H. 92, 205 A.2d 844 (1964). Due process requires that in order to subject a foreign corporation to *in personam* jurisdiction, the defendant must have "minimum contacts" with

the forum state so that the institution of suit does not offend "traditional notions of fair play and substantial justice." *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945); *McGee* v. *International Life Insurance Co.*, 355 U.S. 220 (1957). Consequently, the Court must determine whether the defendant's contacts were continuous and purposeful, such that it was forseeable that they would have consequences to plaintiff in the state. Cf. *Escude Cruz* v. *Ortho Pharmaceutical Corp.*, 619 F.2d 902 (1st Cir. 1980). Relevant factors are: the nature, purpose and number of contacts, the connection between the contacts and the cause of action, the interest of the forum, and convenience and fairness to the parties. *Whittaker Corp.* v. *United Aircraft Corp., et al.*, 482 F.2d 1079 (1st Cir. 1973).

Although defendants' contacts with New Hampshire are sparse, they were not random, isolated or transitory. The general course of conduct in circulating magazines throughout the state was purposefully directed at New Hampshire, and inevitably affected persons in the state. Although the person alleging injury in this case is not a state resident, the defendants' contacts may constitute sufficient presence in the state to satisfy the literal requirements of the long-arm statute. This is especially true since the due process limits governing state jurisdiction over out-of-state defendants have been substantially relaxed in recent years.

Protecting defendant, however, is not the only due process concern. The Supreme Court of the United States recently noted that the foreseeability that a defendant's activities would have an effect within the forum state is not a "sufficient benchmark" for personal jurisdiction

under the Due Process Clause. "[W]e have never accepted the proposition that state lines are irrelevant for jurisdictional purposes . . . The reasonableness of asserting jurisdiction over the defendant must be assessed in the context of our federal system of government." *World Wide Volkswagen, Corp.* v. *Woodson,* 444 U.S. 286, 293 (1979).

Even if the defendants have sufficient contacts to satisfy the literal requirements of the long arm statute, "the exercise of jurisdiction has to be reasonable from the standpoint of New Hampshire's interest in the litigation." *Leeper* v. *Leeper,* 114 N.H. 294, 296, 319 A.2d 626, 628 (1974). The concern for orderly and efficient administration of the laws is implicit in the requirement of fairness enunciated in *International Shoe.* Due process "does not contemplate that a state may make binding a judgment *in personam* against an individual or corporate defendant with which the state has no contacts, ties, or relations." *International Shoe, supra* at 319; cited in *World Wide Volkswagen, supra* at 294. Therefore, the determination of jurisdiction must take into account the forum state's interest in adjudicating the dispute, even if it results in denial of jurisdiction. In *Seymour* v. *Parke, Davis & Co.,* 423 F.2d 584 (1st Cir., 1970), the Court of Appeals for the First Circuit, noting that *International Shoe* "restricts, as well as enlarges, concepts of jurisdiction," held that fairness will not permit a state to assume jurisdiction where the plaintiff has no attachment to the forum, and the defendant has minimal business activities.

The state of New Hampshire's interest in any defamation action is to protect its citizens from the publication of libelous statements. Plaintiff is not one of its citizens,

in fact she has the barest of contacts with New Hampshire. Ms. Keeton has never resided here and presently resides in the state of New York. She has no property interests in the state and has not shown any factors which make her anything other than a stranger to the state of New Hampshire. The argument that she has acquired a reputation in the state because of the monthly publication of her name in the masthead of *Penthouse* magazine is strained at best. The magazine does not publish her picture and in no way attempts to distinguish her name from that of dozens of other names which appear on the magazine's credits page. Being listed in this litany of unknowns does not make her name a household word here, nor does it create a reputation or image of any kind in New Hampshire. In short, the plaintiff has demonstrated absolutely no connection with the state of New Hampshire. At best the state has only a tenuous, generalized interest in the present litigation. Any such interest is shared by the other forty-nine states and the foreign countries where *Hustler* is circulated. See *Curtis Publishing Co.* v. *Birdsong*, 360 F.2d 344 (5th Cir. 1966), cited in *Seymour, supra* at 587.

The plaintiff has had more than ample opportunity to bring a complaint in a forum having a rational nexus with the parties and events which give rise to this action. While the state of New Hampshire may have the only statute of limitations which has not run and thereby benefits the plaintiff, Ms. Keeton has failed to demonstrate sufficient foundation to justify the exercise of *in personam* jurisdiction by this Court. The attenuated relationship between the state of New Hampshire and the parties and events in the present case requires that the

Order and Opinion of the United States District Court for the District of New Hampshire, Filed June 18, 1981

complaint be dismissed for lack of *in personam* jurisdiction.

This ruling obviates any need for the Court to consider the additional issues raised by the defendants' motions, since personal jurisdiction must be considered as a threshold question. *LeRoy* v. *Great Western Corp.*, 443 U.S. 173 (1979).

Accordingly, the defendant's motion to dismiss for lack of personal jurisdiction is allowed.

ANRREW A. CAFFREY, J.
Andrew A. Caffrey, J.

cc: W. Michael Dunn,Esq.
Dort S. Bigg, Esq.
Norman Roy Grutman, Esq.
Jeffrey H. Daichman, Esq.
C. William Brownfield, Esq.

Order and Opinion of the United States District Court for the District of New Hampshire, Filed June 18, 1981

UNITED STATES DISTRICT COURT

DISTRICT OF NEW HAMPSHIRE

Civil Action No. C-80-498-D

KATHY KEETON,

Plaintiff,

v.

HUSTLER MAGAZINE, INC., *et al.*,

Defendants.

ORDER

June 18, 1981

CAFFREY, J.*

In accordance with opinion filed this date, it is

ORDERED:

Defendants' motion to dismiss is allowed.

Complaint dismissed.

ANDREW A. CAFFREY, J.
Andrew A. Caffrey, J.

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*Of the District of Massachusetts sitting by designation.

Order and Opinion of the United States District Court for the District of New Hampshire, Filed June 18, 1981

cc: W. Michael Dunn,Esq.
Dort S. Bigg, Esq.
Norman Roy Grutman, Esq.
Jeffrey H. Daichman, Esq.
C. William Brownfield, Esq.

Opinion of the United States Court of Appeals for the First Circuit, Entered June 16, 1982

KATHY KEETON,

Plaintiff-Appellant,

v.

HUSTLER MAGAZINE, INC., *et al.*,

Defendants-Appellees.

No. 81-1489

United States Court of Appeals,

First Circuit.

Argued Jan. 6, 1982.

Decided June 16, 1982.

New York resident brought action against foreign enterprises involved in publication of magazine alleging that she was libeled by photographs and comments that appeared in defendants' magazine. The United States District Court for the District of New Hampshire, Andrew A. Caffrey, Chief Judge, dimissed the action, and plaintiff appealed. The Court of Appeals, Breyer, Circuit Judge, held that due process considerations precluded New Hampshire from exercising jurisdiction over defenadnts.

Affirmed.

Opinion of the United States Court of Appeals for the First Circuit, Entered June 16, 1982

CONSTITUTIONAL LAW 305(6)

Due process considerations precluded New Hampshire from exercising jurisdiction over foreign enterprises involved in publication of magazine in New York resident's libel action in light of the parties' minimal contacts with New Hampshire and in light of fact that nearly all damages plaintiff sought arose from injury to her reputation outside of New Hampshire. U.S.C.A. Const. Amend. 14; N.H. RSA 300.-14, 510:4, subd. 1.

Jeffrey H. Daichman, with whom W. Michael Dunn, Sheehan, Phinney, Bass & Green, Professional Association, Manchester, N.H., Norman Roy Grutman, and Grutman, Schafrann & Miller, New York City, were on brief, for appellant.

C. William Brownfield, Columbus, Ohio, with whom Dort S. Bigg, Gregory A. Holmes, Wiggin & Nourie, Manchester, N.H. and Brownfield, Bowen, Bally & Sturtz, Columbus, Ohio, were on brief, for appellees.

Before COFFIN, Chief Judge, BOWNES and BREYER, Circuit Judges.

BREYER, Circuit Judge.

The plaintiff-appellant in this case is a resident of New York who claims that she was libeled by photographs and comments that appeared in "Hustler Magazine" and "The Best of Hustler." She sues several Ohio corporations and one California resident involved in the enterprises that published the "libelous" materials. Originally she brought suit in Ohio, where the magazines were published. There, her libel claim was dismissed as barred by the Ohio statute of limitations and her invasion of privacy claim was dis-

missed as barred by the New York statute of limitations, which the Ohio court considered to be "migratory." Plaintiff then brought this suit in New Hampshire, which she says, is the only state remaining in which the statute of limitations has not run. The relevant New Hampshire "long arm" statutes (see appendix) authorizing service of process on defendants seek to extend jurisdiction over nonresidents to the fullest extent permitted under the federal constitution. *Leeper* v. *Leeper*, 114 N.H. 294, 296, 319 A.2d 626 (1974); *Roy* v. *North American Newspaper Alliance, Inc.*, 106 N.H. 92, 95, 205 A.2d 844 (1964). The federal district court dismissed this suit on the ground that the federal constitution—in particular the Due Process Clause of the Fourteenth Amendment—would not permit New Hampshire to exercise jurisdiction over defendants in this instance. We affirm its decision.

The district court reasonably concluded that defendants' contact with New Hampshire consist of sending magazines there to be circulated through independent distributors. Their circulation in New Hampshire amounts to less than one percent of their total circulation in the United States. Plaintiff's contacts with New Hampshire consist of the facts that her name is listed as a corporate officer or staff member of a magazine ("Penthouse") and that she is an editor of others ("Viva" and Omni") which have also circulated in New Hampshire. The basic legal standard imposed by the Due Process Clause is whether it is "reasonable" or basically "fair" to subject the defendant to suit in this forum under these circumstances. *International Shoe Co.* v. *Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945); *Seymour* v. *Parke, Davis & Co.*, 423 F.2d 584 (1st Cir. 1970). And, the Supreme Court has recently pro-

vided guidance for interpreting the "reasonableness" standard. In *World-Wide Volkswagen Corp.* v. *Woodson,* 444 U.S. 286, 292, 100 S.Ct. 559, 564, 62 L.Ed.2d 490 (1980), it wrote

> Implicit in this emphasis on reasonableness is the understanding that the burden on the defendant, while always a primary concern, will in an appropriate case be considered in light of other relevant factors, including the forum State's interest in adjudicating the dispute, *see McGee* v. *International Life Ins. Co.,* 355 U.S. 220, 223 [78 S.Ct. 199, 201, 2 L.Ed.2d 223] (1957); the plaintiff's interest in obtaining convenient and effective relief, *see Kulko* v. *California Superior Court,* [436 U.S. 84, 92 [98 S.Ct. 1690, 1696, 56 L.Ed.2d 132] (1978)], at least when that interest is not adequately protected by the plaintiff's power to choose the forum, *cf. Shaffer* v. *Heitner,* 433 U.S. 186, 211, n.37 [97 S.Ct. 2569, 2583, 53 L.Ed.2d 683] (1977); the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in further fundamental substantive social policies, *see Kulko* v. *California Superior Court, supra* 436 U.S. at 93, 98 [98 S.Ct. at 1697, 1700.]

Thus, the Supreme Court would have us judge "reasonableness" and "fairness" not exclusively from the point of view of defendant's contacts with the state. To the contrary, "[i]f a defendant has certain judicially cognizable ties with a State, a variety of factors *relating to the particular cause of action* may be relevant to the determination whether the exercise of jurisdiction would

comport with 'traditional notions of fair play and substantial justice.'" *Rush* v. *Savchuk*, 444 U.S. 320, 332, 100 S.Ct. 571, 579, 62 L.Ed.2d 516 (1980) (emphasis supplied). We have previously noted the relevance of all these factors, *Seymour* v. *Parke, Davis & Co.*, *supra*, as has the State of New Hampshire in interpreting its jurisdictional statute. *Leeper* v. *Leeper*, 114 N.H. at 296, 319 A.2d 626.

Applying these standards to this case, we first note that defendants' contacts with the state are minimal; they have no offices, employees, bank accounts, real property or other business connections there. Plaintiff's contacts are even fewer, consisting of her name on the masthead of, at most, three magazines. And, New Hampshire's interest consist of a desire to deter wrongful conduct within its boundaries, *Leeper* v. *Leeper*, 114 N.H. at 298, 319 A.2d 626, a desire to protect its citizens from reading libels about outsiders. *Curtis Publishing Co.* v. *Birdsong*, 360 F.2d 344, 347 (5th Cir. 1966), or a desire to prevent injuries to the reputations of outsiders from occurring within the state because those outsiders may someday be hurt if they turn up in New Hampshire or because there may be a spillover effect on their reputations elsewhere. There is no allegation suggesting that the allegedly defamatory publication was "aimed exclusively" or primarily at New Hampshire, *see Edwards* v. *Associated Press*, 512 F.2d 258, 267-68 (5th Cir. 1975), or that it caused a "substantial effect" on that state, *see Anselmi* v. *Denver Post, Inc.*, 552 F.2d 316, 325 (10th Cir.), *cert. denied sub nom. Times Mirror Co.* v. *Anselmi*, 432 U.S. 911, 97 S.Ct. 2960, 53 L.Ed.2d 1084 (1977); *Church of Scientology of California* v. *Adams*, 584 F.2d 893, 898 (9th Cir. 1978).

The major factor favoring plaintiff is that she is suing in part for damages suffered in New Hampshrie. Case

law makes clear that defendants' few contacts with New Hampshire—sending in magazines—would be sufficient to support a suit by a New Hampshire resident for libel occurring in New Hampshire. *Buckley* v. *New York Post Corp.*, 373 F.2d 175 (2d Cir. 1967); *see Curtis Publishing Co.* v. *Golino*, 383 F.2d 586, 591-92 (5th Cir. 1967). *See also* R. Sack, *Libel, Slander and Related Problems* 509-10 (1980). In such case, defendant's minimal presence would combine with plaintiff's many contacts, New Hampshire's interest in protecting its residents, and the fact that defendant's presence itself caused the injury—in making it fair to allow the suit. The Supreme Court has also suggested that if the defendant has launched "its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State," an out-of-state plaintiff might be able to sue in the forum state for in-state injury. *See World-Wide Volkswagen* v. *Woodson*, 444 U.S. at 297-98, 100 S.Ct. at 567-68.

The major factor favoring defendants is that *most* damages that plaintiff seeks arose *outside* the state of New Hampshire. We held specifically in *Seymour* v. *Parke Davis & Co., supra,* that an out-of-state plaintiff could *not* bring against an out-of-state defendant (with a few state contacts) a suit based upon out-of-state activity. Although at least one Supreme Court case has allowed an "out-of-state plaintiff/out-of-state defendant/out-of-state activity" suit, *Perkins* v. *Benguet Consol. Mining Corp.*, 342 U.S. 437, 72 S.Ct. 413, 96 L.Ed. 485 (1952), in that case the Court noted defendant's intense "continuous and systematic business contacts" with the forum state (offices, corporate officers, secretaries) and that the only alternate forum was highly inconvenient

(the Philippines)—factors missing both in *Seymour* and here.

In other words, *Buckley* combined with *Volkswagen* would seem to allow this suit insofar as it alleges New Hampshire-based defamation, but *Seymour* would seem to forbid it insofar as it is based upon outside-New Hampshire activity. The difficulty with the case lies in the fact that, unlike *Seymour*, some of the activity about which the plaintiff complains took place in New Hampshire, but unlike *Buckley*, plaintiff lives outside of New Hampshire and most of the activity about which plaintiff complains took place outside the state.

This difficulty arises out of the special cause of action asserted in this case: a libel allegedly caused by a publication that circulated in more than one state. The distinctive element of a "multistate defamation" action is that the plaintiff must recover the damages caused in *all* states in one single suit. *Patch* v. *Playboy Enterprises, Inc.*, 652 F.2d 754, 757 (8th Cir. 1981); *Proctor* v. *Gissendaner*, 579 F.2d 876, 880 n.7 (5th Cir. 1978), *modified*, 587 F.2d 182 (5th Cir. 1979); *Eliah* v. *Ucatan Corp.*, 433 F.Supp. 309 (W.D.N.Y. 1977); *Restatement (Second) of Torts* § 577A(4) (1977). Of course, in that suit, ordinarily "rights and liabilities . . . are determined by the local law of the state which . . . has the most significant relationship to the occurrence and the parties . . .," *Restatement (Second) of Conflict of Laws* § 150 (1971)—a fact that minimizes the incentive to shop for a forum. But, this sensible conflicts rule does not necessarily apply to the forum's own statute of limitations—a statute which, if considered "procedural," will be applied by the forum state. *See Restatement (Second) Conflict of Laws* §§ 104-

05 (1971). Indeed, in this case, it seems likely that New Hampshire (unlike Ohio) would consider its statute of limitations procedural, and apply it, resurrecting an action that is dead everywhere else. *See Barrett* v. *Boston & Maine Railroad*, 104 N.H. 70, 178 A.2d 291 (1962); *Gordon* v. *Gordon*, 118 N.H. 356, 360, 387 A.2d 339 (1978); *Cf. Dupuis* v. *Woodward*, 97 N.H. 351, 88 A.2d 177 (1952). This fact explains why plaintiff wishes to sue in New Hampshire, but it does not automatically make it fair for her to do so.

Indeed, these very circumstances suggest why it would be unfair to allow plaintiff to sue. Nearly all the damages the plaintiff seeks arise from injury to her reputation outside of New Hampshire caused by activity that took place outside of New Hampshire. New Hampshire has no special interest in protecting a nonresident against this out-of-state activity. *Cf. Roy* v. *North American News Alliance Inc.*, 106 N.H. at 97, 205 A.2d 844. Moreover, even if we consider statutes of limitations "procedural," we can still note that statutes of limitations in general—and certainly in plaintiff's home state—penalize a plaintiff who sleeps on her rights, as has Ms. Keeton, and provide defendant publishers security against lawsuits so long delayed. *See, e.g., Gregorie* v. *G. P. Putnam's Sons*, 298 N.Y. 119, 125, 81 N.E.2d 45 (1948); *Morrison* v. *National Broadcasting Co.*, 19 N.Y.2d 453, 459, 280 N.Y.S.2d 641, 227 N.E.2d 572 (1967). To allow a multistate defamation suit here would thwart such policies by exposing a publisher to the risk of suit covering all damage suffered everywhere as long as there is any state anywhere with a statute of limitations that has not yet expired. *Cf.* Martin, Constitutional Limitations

for Choice of Law, 61 Cornell L.Rev. 185, 223 & n.124 (1976). Whatever small interest New Hampshire might have in awarding damages to a nonresident for New Hampshire injuries is outweighed by these other policies —at least here, where the in-state activity is so small a part of the total activity upon which the suit is based.

For these reasons, we believe that the small amount of New Hampshire activity does not sufficiently distinguish this case from *Seymour* to warrant a different result. We note that the Fifth Circuit has also held that an out-of-state plaintiff cannot sue an out-of-state publisher who has sent his publication into the forum state. *Curtis Publishing Co.* v. *Birdsong, supra. See Comment,* 67 Colum.L.Rev. 342, 363-64 (1967); Note, 45 Tex.L.Rev. 188 (1966). While we accept this case as support, we do not decide that an out-of-state plaintiff can never sue an out-of-state publisher for damage inflicted when his publication is sent into the forum state. Rather, considering this case on the individual facts alleged in the complaint, *cf. World-Wide Volkswagen Corp., supra*, we decide here only that the New Hampshire tail is too small to wag so large an out-of-state dog.

Affirmed.

APPENDIX

As to the personal defendant, N.H.R.S.A. 510:4(1) establishes:

> Any person, who is not an inhabitant of this state, and who in person or through an agent transacts any business within this state, commits a tortious act within this state, or has the ownership,

> use or possession of any real or personal property situated in this state, submits himself or his personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from or growing out of the acts enumerated above.

Jurisdiction over the corporate defendants is based on N.H.R.S.A. 300:11(c) [300:14] which in its relevant part states:

> If a foreign corporation makes a contract to be performed in whole or in part by either party in New Hampshire, or if such foreign corporation commits a tort in whole or in part in New Hampshire, such acts shall be deemed to be doing business in New Hampshire by such foreign corporation and should be deemed equivalent to the appointment by such foreign corporation of the secretary of the state of New Hampshire and his successors to be its true and lawful attorney upon whom may be served all lawful process in any actions or proceedings against such foreign corporation arising from or growing out of such contract or tort.

Constitutional and Statutory Provisions

Constitution of the United States

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

• • •

AMENDMENT IV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

New Hampshire R.S.A. 644:11—Criminal Defamation

I. A person is guilty of a misdemeanor if he purposely communicates to any person, orally or in writing, any information which he knows to be false and knows will tend to expose any other living person to public hatred, contempt or ridicule.

II. As used in this section "public" included any professional or social group of which the victim of the defamation is a member.

Constitution and Statutory Provisions

New York CPLR §302(a)(2)(3)

Personal Jurisdiction by Acts of Non-Domiciliaries

(a) *Acts which are the basis of jurisdiction.* As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any nondomiciliary, or his executor or administrator, who in person or through an agent:

• • •

2. commits a tortious act within the state, except as to a cause of action for defamation of character arising from the act; or

3. commits a tortious act without the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act, if he

(i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state or

(ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce;